

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD VINCENT HALL,

Defendant-Appellant.

---

UNPUBLISHED

August 26, 2003

No. 239708

St. Clair Circuit Court

LC No. 01-002528-FH

Before: Markey, P.J., and Cavanagh and Saad, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for possession of marijuana, MCL 333.7403(2)(d). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant asserts that his co-defendant's statement was admitted in violation of his right to confrontation. A statement against penal interest, admissible as substantive evidence under MRE 804(b)(3), does not violate the Confrontation Clause if the prosecutor establishes that the declarant is unavailable as a witness and the statement bears adequate indicia of reliability or falls within a firmly rooted hearsay exception. *People v Poole*, 444 Mich 151, 163; 506 NW2d 505 (1993).

Although defendant argues that *Lilley v Virginia*, 527 US 116; 119 S Ct 1887; 144 L Ed 2d 117 (1999), requires reversal, this Court has held that *Poole* remains binding precedent because *Lilly* was a plurality opinion and a majority of the US Supreme Court did not hold that the Confrontation Clause imposes a blanket ban on the use of accomplice statements. *People v Beasley*, 239 Mich App 548, 558-559; 609 NW2d 581 (2000).

Applying the *Poole* factors, the trial court did not err in admitting the statements. The statement was voluntarily given and contemporaneous with the event. Although the statement was made to a law enforcement official, it was uttered spontaneously without prompting from the officer. Co-defendant did not minimize her role, or shift the blame onto defendant. There is no indication that the statement was made for revenge, or that co-defendant had a motive to lie.

The record does not show that the sentencing court was unaware of its discretion to not impose the maximum sentence. There is no legal requirement that a trial court state on the record that it understands it has discretion and is utilizing that discretion. *People v Beneson*, 192

Mich App 469, 471; 481 NW2d 799 (1992). Absent clear evidence that the sentencing court incorrectly believed that it lacked discretion, the presumption that a trial court knows the law must prevail. *People v Knapp*, 244 Mich App 361, 389; 624 NW2d 227 (2001).

Affirmed.

/s/ Jane E. Markey

/s/ Mark J. Cavanagh

/s/ Henry William Saad